

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **House Bill 4712**

BY DELEGATES D. KELLY AND FAST

[Introduced February 15, 2022; Referred to the  
Committee on the Judiciary]

1 A BILL to amend and reenact §50-3-2a of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §62-4-17 of said code, all relating to reducing the time period allowed  
 3 for enrollment in magistrate court and circuit court payment plans and limiting the  
 4 maximum length of payment plans.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 50. MAGISTRATE COURTS.**

### **ARTICLE 3. COSTS, FINES AND RECORDS.**

**§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; payment plan; failure to pay fines results in a late fee and judgment lien.**

1 (a) A magistrate court may accept electronic payments, credit cards, cash, money order,  
 2 or certified check for payment of all costs, fines, fees, forfeitures, restitution, or penalties in  
 3 accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the  
 4 credit company shall be paid by the person responsible for paying the cost, fine, forfeiture,  
 5 restitution, or penalty.

6 (b) Upon request and subject to the following requirements, the magistrate clerk shall  
 7 establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties  
 8 imposed by the court, so long as the person signs and files with the clerk, an affidavit stating that  
 9 he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

10 (1) A \$25 administrative processing fee shall be paid at the time the payment form is filed  
 11 or, in the alternative, the fee may be paid in no more than five equal monthly payments;

12 (2) Unless incarcerated, a person must enroll in a payment plan ~~no later than 180 calendar~~  
 13 ~~days after the date the court enters~~ upon the entry of the order assessing the costs, fines,  
 14 forfeitures, restitution, or penalties; and

15 (3) If the person is incarcerated, he or she may enroll in a payment plan within ~~480~~ 30

16 calendar days after release.

17 (c) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan  
18 form and financial affidavit for requests for the establishment of payment plan pursuant to  
19 subsection (a) of this section. The forms shall be made available for distribution to the offices of  
20 magistrate clerks, and magistrate clerks shall use the payment plan form and affidavit form  
21 developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

22 (d)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the  
23 dates on which the payments are due; (C) the amount due for each payment; (D) all acceptable  
24 payment methods; and (E) the circumstances under which the person may receive a late fee,  
25 have a judgment lien recorded against him or her, or have the debt sent to collections for  
26 nonpayment.

27 (2) The monthly payment under the payment plan shall be calculated based upon all costs,  
28 fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the  
29 person's annual net income divided by 12 or \$10, whichever is greater: Provided, That if this  
30 calculation results in a payment plan lasting more than three years, the monthly payments shall  
31 be set by dividing the total amount owed by 36.

32 (3) The court may review the reasonableness of the payment plan, and may on its own  
33 motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution,  
34 or penalties to community service if the court determines that the individual has had a change in  
35 circumstances and is unable to comply with the terms of the payment plan.

36 (e) (1) The clerk may assess a \$10 late fee each month if a person fails to comply with the  
37 terms of a payment plan, and if any payment due is not received within 30 days after the due  
38 date, and the person:

39 (A) Is not incarcerated;

40 (B) Has not brought the account current;

41 (C) Has not made alternative payment arrangements with the court; or

42 (D) Has not entered into a revised payment plan with the clerk before the due date.

43 (2) If, after 90 days, a payment has not been received, the clerk may do one or both of the  
44 following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign  
45 the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency  
46 contained on the State Tax Commissioner's list of eligible debt collection agencies established  
47 and maintained pursuant to §14-1-18c of this code, an internal collection division, or both:  
48 *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the  
49 court and may not be reduced by any collection costs or fees: *Provided, however*, That the  
50 collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send  
51 notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

52 (f)(1) If after 180 days of a judgment, a person fails to enroll in a payment plan and fails  
53 to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late  
54 fee and shall notify the person of the following:

55 (A) That he or she is 180 days past due in the payment of costs, fines, forfeitures,  
56 restitution, or penalties imposed pursuant to a judgment of the court;

57 (B) That he or she has failed to enroll in a payment plan;

58 (C) Whether a \$10 late fee has been assessed; and

59 (D) That he or she may be the subject of a judgment lien or have his or her debt sent to a  
60 collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not  
61 resolved within 30 days of the date of the notice issued pursuant to this subsection.

62 (2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this  
63 subsection, a payment has not been received, the clerk may do one or both of the following:

64 (A) Record a judgment lien as described in subsection (f) of this section; or

65 (B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt  
66 collection agency contained on the State Tax Commissioner's list of eligible debt collection  
67 agencies established and maintained pursuant to §14-1-18c of this code, an internal collection

68 division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be  
69 remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*,  
70 That the collection fee may not exceed 25 percent of the delinquent payment amount.

71 (g) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county  
72 of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The  
73 prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county  
74 commission in the county where the defendant was convicted and in any county wherein the  
75 defendant resides or owns property. The clerk of the county commission shall record and index  
76 these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded,  
77 the amount stated to be owed in the abstract constitutes a lien against all property of the  
78 defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for  
79 which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court  
80 shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney  
81 with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code,  
82 for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk,  
83 the prosecuting attorney shall file the release of judgment in the office of the clerk of the county  
84 commission in each county where an abstract of the judgment was recorded. The clerk of the  
85 county commission shall record and index the release of judgment without charge or fee to the  
86 prosecuting attorney.

87 (h) A person whose driver's license was suspended before July 1, 2020, solely for the  
88 nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have  
89 his or her license reinstated:

90 (1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties  
91 and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

92 (2) Upon establishing a payment plan pursuant to subsection (a) of this section and the  
93 payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a

94 payment plan is in effect, and upon receipt of the notification, the division shall waive the  
95 reinstatement fee.

96 (i)(1) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by  
97 the magistrate court for a hunting violation described in chapter 20 of this code are not paid within  
98 180 days from the date of judgment and the expiration of any stay of execution, the magistrate  
99 court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of  
100 the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of  
101 Natural Resources shall suspend any privilege the person failing to appear or otherwise respond  
102 may have to hunt in this state, including any hunting license issued to the person by the Division  
103 of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid  
104 in full.

105 (2) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the  
106 magistrate court for a fishing violation described in Chapter 20 of this code are not paid within 180  
107 days from the date of judgment and the expiration of any stay of execution, the magistrate court  
108 clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the  
109 Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of  
110 Natural Resources shall suspend any privilege the person failing to appear or otherwise respond  
111 may have to fish in this state, including any fishing license issued to the person by the Division of  
112 Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in  
113 full.

114 (j)(1) If a person charged with any criminal violation of this code fails to appear or otherwise  
115 respond in court, the magistrate court shall notify the Commissioner of the Division of Motor  
116 Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner appears  
117 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of  
118 Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may  
119 have to operate a motor vehicle in this state, including any driver's license issued to the person

120 by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until  
121 all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full. The suspension  
122 shall be imposed in accordance with the provisions of §17B-3-6 of this code.

123 (2) In addition to the provisions of subdivision (1) of this subsection, if a person charged  
124 with any hunting violation described in Chapter 20 of this code fails to appear or otherwise respond  
125 in court, the magistrate court shall notify the Director of the Division of Natural Resources of the  
126 failure thereof within 15 days of the scheduled date to appear unless the person sooner appears  
127 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of  
128 the Division of Natural Resources shall suspend any privilege the person failing to appear or  
129 otherwise respond may have to hunt in this state, including any hunting license issued to the  
130 person by the Division of Natural Resources, until final judgment in the case and, if a judgment of  
131 guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

132 (3) In addition to the provisions of subdivision (1) of this subsection, if a person charged  
133 with any fishing violation described in Chapter 20 of this code fails to appear or otherwise respond  
134 in court, the magistrate court shall notify the Director of the Division of Natural Resources of the  
135 failure thereof within 15 days of the scheduled date to appear unless the person sooner appears  
136 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of  
137 the Division of Natural Resources shall suspend any privilege the person failing to appear or  
138 otherwise respond may have to fish in this state, including any fishing license issued to the person  
139 by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty,  
140 until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

141 (k) In every criminal case which involves a misdemeanor violation, a magistrate may order  
142 restitution where appropriate when rendering judgment.

143 (l) Notwithstanding any provision of this code to the contrary, except as authorized by this  
144 section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the  
145 magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines,

146 fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to  
147 amounts due in the following order:

- 148 (1) Regional Jail Fund;
- 149 (2) Worthless check payee;
- 150 (3) Restitution;
- 151 (4) Magistrate Court Fund;
- 152 (5) Worthless Check Fund;
- 153 (6) Per diem regional jail fee;
- 154 (7) Community Corrections Fund;
- 155 (8) Regional Jail Operational Fund;
- 156 (9) Law-Enforcement Training Fund;
- 157 (10) Crime Victims Compensation Fund;
- 158 (11) Court Security Fund;
- 159 (12) Courthouse Improvement Fund;
- 160 (13) Litter Control Fund;
- 161 (14) Sheriff arrest fee;
- 162 (15) Teen Court Fund;
- 163 (16) Other costs, if any;
- 164 (17) Fine.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

### **ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.**

**§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.**

- 1 (a) Upon request and subject to the following requirements, the circuit clerk shall establish
- 2 a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by

3 the court, so long as the person signs and files with the clerk, an affidavit, stating that he or she  
4 is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

5 (1) A \$25 administrative processing fee shall be paid at the time the payment form is filed  
6 or, in the alternative, the fee may be paid in no more than five equal monthly payments;

7 (2) Unless incarcerated, a person must enroll in a payment plan ~~no later than 180 calendar~~  
8 ~~days after the date the court enters~~ upon the entry of the order assessing the costs, fines,  
9 forfeitures, restitution, or penalties; and

10 (3) If the person is incarcerated, he or she may enroll in a payment plan within ~~480~~ 30  
11 calendar days after release.

12 (b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan  
13 form and financial affidavit for requests for the establishment of payment plan pursuant to  
14 subsection (a) of this section. The forms shall be made available for distribution to the offices of  
15 circuit clerks and circuit clerks shall use the payment plan form and affidavit form developed by  
16 the West Virginia Supreme Court of Appeals when establishing payment plans.

17 (c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the  
18 dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable  
19 payment methods; and (E) the circumstances under which the person may receive a late fee,  
20 have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

21 (2) The monthly payment under the payment plan shall be calculated based upon all costs,  
22 fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the  
23 person's annual net income divided by 12, or \$10, whichever is greater: Provided, That if this  
24 calculation results in a payment plan lasting more than five years, the monthly payments shall be  
25 set by dividing the total amount owed by 60.

26 (3) The court may review the reasonableness of the payment plan, and may on its own  
27 motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution,  
28 or penalties to community service if the court determines that the individual has had a change in

29 circumstances and is unable to comply with the terms of the payment plan.

30 (d) (1) The clerk may assess a \$10 late fee each month if a person fails to comply with the  
31 terms of a payment plan, and if any payment due is not received within 30 days after the due  
32 date, and the person:

33 (A) Is not incarcerated;

34 (B) Has not brought the account current;

35 (C) Has not made alternative payment arrangements with the court; or

36 (D) Has not entered into a revised payment plan with the clerk before the due date.

37 (2) If, after 90 days, a payment has not been received, the clerk may do one or both of the  
38 following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign  
39 the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency  
40 contained on the State Tax Commissioner's list of eligible debt collection agencies established  
41 and maintained pursuant to §14-1-18c of this code, an internal collection division, or both:  
42 *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the  
43 court and may not be reduced by any collection costs or fees: *Provided, however*, That the  
44 collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send  
45 notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

46 (e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to  
47 pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late  
48 fee and shall notify the person of the following:

49 (A) That he or she is 180 days past due in the payment of costs, fines, forfeitures,  
50 restitution, or penalties imposed pursuant to a judgment of the court;

51 (B) That he or she has failed to enroll in a payment plan;

52 (C) Whether a \$10 late fee has been assessed; and

53 (D) That he or she may be the subject of a judgment lien or have his or her debt sent to a  
54 collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not

55 resolved within 30 days of the date of the notice issued pursuant to this subsection.

56 (2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this  
57 subsection, a payment has not been received, the clerk may do one or both of the following:

58 (A) Record a judgment lien as described in subsection (f) of this section; or

59 (B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt  
60 collection agency contained on the State Tax Commissioner's list of eligible debt collection  
61 agencies established and maintained pursuant to §14-1-18c of this code, an internal collection  
62 division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be  
63 remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*,  
64 That the collection fee may not exceed 25 percent of the delinquent payment amount.

65 (f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county  
66 of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The  
67 prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county  
68 commission in the county where the defendant was convicted and in any county wherein the  
69 defendant resides or owns property. The clerk of the county commission shall record and index  
70 these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded,  
71 the amount stated to be owed in the abstract constitutes a lien against all property of the  
72 defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for  
73 which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court  
74 shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney  
75 with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code,  
76 for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk,  
77 the prosecuting attorney shall file the release of judgment in the office of the clerk of the county  
78 commission in each county where an abstract of the judgment was recorded. The clerk of the  
79 county commission shall record and index the release of judgment without charge or fee to the  
80 prosecuting attorney.

81 (g) A person whose driver's license was suspended prior to July 1, 2020, solely for the  
82 nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have  
83 his or her license reinstated:

84 (1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties  
85 and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

86 (2) Upon establishing a payment plan pursuant to subsection (a) of this section and the  
87 payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a  
88 payment plan is in effect, and upon receipt of the notification, the division shall waive the  
89 reinstatement fee.

90 (h) If a person charged with a criminal offense fails to appear or otherwise respond in court  
91 after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof  
92 within 15 days of the scheduled date to appear unless such person sooner appears or otherwise  
93 responds in court to the satisfaction of the court. Upon such notice, the Division of Motor Vehicles  
94 shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until  
95 such time that the person appears as required.

NOTE: The purpose of this bill is to require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court and to limit the maximum length of payment plans to three years in magistrate court and five years in circuit court.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.